No. 82-1382

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In The

Supreme Court of the United States

October Term, 1982

In the Matter of the Application of WALTER TOLUB, individually and on behalf of the Association of Law Secretaries, et al.,

Appellants,

vs.

HERBERT B. EVANS, et al.,

Appellees.

On Appeal from the Court of Appeals of the State of New York

MOTION TO DISMISS OR AFFIRM

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MOTION TO DISMISS OR AFFIRM

STATEMENT

This motion to dismiss or affirm pursuant to Rule 16 of the Supreme Court Rules is made by appellees, Hon. Lawrence H. Cooke, Chief Judge of the State of New York, Hon. Herbert B. Evans, Chief Administrative Judge of the Unified Court System of the State of New York, Hon. E. Leo Milonas, former Deputy

Chief Administrative Judge for the courts in New York City and the New York State Office of Court Administration ("court appellees") and Howard Miller, Director of the Budget of the State of New York and the State of New York ("state appellees"), in response to appellants' jurisdictional statement, invoking the jurisdiction of this Court pursuant to 28 U.S.C. §1257(2), to hear their appeal from an order of the New York Court of Appeals that upheld the constitutionality of Section 39(8)(b) of the New York Judiciary Law.

Appellants claim on appeal that their rights were violated by appellees under the equal protection clause of the Fourteenth Amendment of the United States Constitution by failing to equalize salaries between appellants, prior New York city-paid law clerks who were transferred to the state payroll on April 1, 1977, and prior state-paid law clerks with the same number of years' experience. Appellees move to dismiss or affirm this appeal on the grounds that the equal protection claim raised by appellants is too insubstantial to permit this Court to take jurisdiction.

A. The Unified Court Budget Act

On August 5, 1976, during an Extraordinary Session of the New York Legislature dealing solely with court reform, the Legislature enacted the Unified Court Budget Act. (McKinney's Session Laws of New York, L. 1976, c. 966, as amended; now codified as Section 39 of the Judiciary Law). This Act provided that, effective April 1, 1977, the state would assume the expenses of all of the courts of record in New York previously paid by the various localities. In the largest and most complex transfer of fiscal responsibility for a court system ever made in the United States, more than 8,500 nonjudicial court employees, including appellants, were transferred from scores of different local payrolls onto the state payroll as state employees (Jurisdictional Statement, p. 4a). This Act was intended to permit the state court system

to operate more efficiently and effectively by having centralized control of all its resources, and was in response, in part, to the inability of some localities to adequately fund the courts or to maintain then-existing staffing and service levels.

Because the court employees had been paid by well over 100 different counties and cities, each had received different salaries and fringe benefits provided by the localities, either by administrative determination or through collective bargaining agreements. The State Legislature chose to preserve all these salaries and benefits; it directed that these employees "be entitled to the salaries, wages, hours and other terms and conditions of employment to which they were entitled pursuant to any law or contract in effect immediately prior to the effective date hereof. . . ." Judiciary Law, §39(6)(a). Further, the Legislature "froze" all existing collective negotiating units, directing that they could be merged only with the consent of the units themselves. Judiciary Law, §39(7). In sum, the transfer of the locally-paid court employees to the state payroll preserved their former local terms and conditions of employment virtually intact.

In providing for a coherent means of assimilating this large number of employees onto the state payroll, together with a simultaneous assumption of substantial non-personnel expenses, the Legislature directed that a classification structure of titles for these new employees be adopted based upon their duties and responsibilities and that salary grades be given to each title. Judiciary Law §39(8)(a). The Legislature further provided that each employee be allocated to his salary grade either at the minimum salary level of the grade or at his then-current salary, whichever was higher. Judiciary Law, §39(8)(b). Where the current salary was used as a basis for allocation, that salary determined the increment step[1] within the salary grade, and future increments

1. Judiciary salary grades contain a minimum starting salary for the first year of service, increment steps for the next four years of service, a longevity step (Cont'd)

were earned and calculated from this base. Judiciary Law, §39(8)(b); *see* Jurisdictional Statement, pp. 6a-7a.

1. The Effect of the Unified Court Budget Act on Appellants

The 8,500 prior locally-paid court employees came onto the state payroll with completely different terms and conditions of employment, depending on which locality paid them and which collective bargaining unit they belonged to, if they happened to belong to such units, as most of them did. Their initial salary treatment under the Act then depended upon the title to which they were classified under the new classification structure established pursuant to the Act. Once allocated to a salary grade as defined by their titles, they were to, and did, receive salary increases based upon their respective collective bargaining agreements, or, if not represented, by administrative action.[2]

Appellants, a group of 176 Supreme Court[3] law clerks who comprise but a handful of the 8,500 transferred employees, had been paid by the City of New York prior to the state takeover. Upon the takeover, they were assigned Law Clerk titles and allocated to the appropriate salary grades for those titles based upon their then-current salaries, as they all had been earning salaries above the minimum of their new salary grades

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(Cont'd)
for the sixth year of service, and an extra longevity step for the eleventh year of service. *See* Judiciary Law, §37(1). Each step increase represents a salary increase of approximately 3½%.

2. Allocation of titles to fixed salary grades preserves the relationships among job titles; determination of individual salaries within those grades then becomes a matter for collective negotiation. *See Evans v. Newman*, 71 A.D. 2d 240 (3d Dept.), *aff'd on A.D. op.*, 49 N.Y. 2d 904 (1980).

3. In New York, the Supreme Court is a trial-level court of general jurisdiction. *See* New York Constitution, Article VI, §7.

(Jurisdictional Statement, p. 7a). Also among the 8,500 transferred employees were full-time law clerks in County Courts, Family Courts and Surrogate's Courts outside of New York City. They were assigned the identical Law Clerk titles and salary grades as those of appellants, and they, too, were allocated to those same grades based upon their then-current salaries as paid by their respective localities. All these groups of identically-titled law clerks thus received different salaries, just as all the other 8,500 transferred employees received salaries different from those received by their counterparts in other localities — except that all transferred employees received at least the minimum salary of their newly assigned salary grades.

2. Comparison of the Salary Treatment of Prior State-Paid Employees with that of Appellants

As compared to the 8,500 employees brought onto the state payroll, there were approximately 1,500 court employees who already were paid by the state prior to the passage of the Unified Court Budget Act and who were not covered by that Act. Some of these were law clerks in the Supreme Courts outside of New York City. All these prior state-paid employees already had been classified to state salary grades, but they had been allocated to those salary grades between 1974 and 1977 based upon their number of years of service in their title (Jurisdictional Statement, p. 6a). Consequently, the salary allocation formula set forth in Section 39(8)(b) as applied to each of the 8,500 employees transferred to the state payroll differed to a degree from the salary allocation formula applied in the period before the Unified Court Budget Act for the 1,500 prior state-paid employees unaffected by the Act.

The allocation procedure at the time of the state takeover was complicated by varying methods of salary determination among all 10,000 court employees, as most belonged to the tens

of different collective negotiating units representing court employees. The classification of law clerks at issue here illustrates these differences. Appellants, prior-New York City paid law clerks, were not members of any collective bargaining units; their salaries had been fixed unilaterally and administratively by the City of New York.[4] Prior state-paid law clerks all were members of a collective bargaining unit and bargained for their salaries. Other prior locally-paid law clerks classified to the same law clerk titles as that of appellants were members of various other collective bargaining units; others had their salaries fixed unilaterally in their respective localities. These different salary determination mechanisms continued after the enactment of the Unified Court Budget Act, except that appellees now are to fix those salaries of employees not in collective bargaining units.[5]

Because of the different methods of salary allocation and salary determination among all court employees, there was no uniform relationship among the salaries of court employees during any fixed period of time. The salaries challenged here are a typical example. While some of those appellants hired before October 15, 1975, may have received lower salaries than prior state-paid law clerks with the same years of service, those appellants hired between October 15, 1975 and April 1, 1977 received *higher* salaries than prior state-paid law clerks hired between those dates. Those hired after April 1, 1977, have received salaries either *equal to*

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4. Appellants all received the same salary, regardless of length of service (Jurisdictional Statement, p. 7a). They were so treated pursuant to their deliberate choice to forego collective negotiation of their salaries so as to be part of a managerial pay plan that provided a uniform salary for all New York City-paid Supreme Court law clerks at a rate advantageous to newly-hired law clerks.

5. The New York State Public Employees Relations Board ruled in 1982 that appellants, as law clerks to judges, may not be designated as managerial employees and must be permitted to collectively negotiate for their terms and conditions of employment. Appellees have accepted this ruling.

or greater than the salaries of prior state-paid law clerks. (*See* Jurisdictional Statement, pp. 7a-8a.)

3. Comparison of Fringe Benefits Between Appellants and Prior State-Paid Law Clerks

Just as there was no consistency of salary among court employees, there was no consistency among all court employees of those fringe benefits that substitute for salary in a compensation package. Since Section 39(6)(a) of the Judiciary Law preserved fringe benefits granted by the localities, appellants continued to receive as state employees the generous insurance and retirement benefits previously granted by New York City. While appellants receive the same basic health insurance coverage as prior state-paid law clerks, they and their families are provided with additional insurance coverage, including life insurance, supplemental medical insurance, dental insurance, and optical insurance — all unavailable to prior state-paid law clerks (Jurisdictional Statement, p. 8a). In addition, appellants remained in the New York City Retirement System [*see* Judiciary Law, §39(9)], which offers more generous retirement benefits than offered by the New York State Retirement System. *Compare* New York State Retirement and Social Security Law, Title 8, *with* New York City Administrative Code, Chapter 3, Title B.

B. The Proceedings Below

In their declaratory judgment action, initiated on or about February 7, 1980, in the Supreme Court, New York County, appellants claimed, *inter alia,* that Section 39(8)(b) of the Judiciary Law denies them equal protection of the law to the extent it foreclosed allocation of their titles to salary grades based upon years of local service in those titles. The court initially found that the "significantly greater fringe benefits" enjoyed by appellants resulted in "no material disparities in total compensation

between [appellants] and prior State-paid law secretaries." (Jurisdictional Statement, p. 4a). In considering salary differences alone apart from total compensation, the court held that the limited resources available to the state in assuming responsibility for local courts provided a reasonable basis for any difference in salaries (*Id.*, p. 13a). The Appellate Division unanimously affirmed without opinion (*Id.*, p. 18a).

The Court of Appeals affirmed as well. Noting that equal protection does not require that all classifications be made with mathematical precision, the court found that the use of the prior salary of locally-paid employees as a guide to their incremental level "assured that the cost of unification would be reasonably controlled and that no one would suffer any loss in salary." (Jurisdictional Statement, p. 24a). Any disparity in salary caused by the allocation formula of Section 39(8)(b) had "a rational basis in the Legislature's concern for an orderly and speedy transition to a State-wide unified court system which was created, at least in part, to alleviate the financial burden imposed by requiring fiscally strained cities and counties to fund the court system." (*Id.*, p. 26a).

The court also found that the fringe benefits enjoyed by appellants "are superior to ones enjoyed by prior State-paid employees." (Jurisdictional Statement, p. 25a). It thereby concluded that "the Legislature considered the total cost of the unification of the court system in enacting the various transitional provisions." (*Id.*). It additionally found that enacting a system of initial salary allocations based on current salary rather than years of prior service would not require the burden of "individual evaluations" of each of the employees transferred to the state payroll (*Id.*, pp. 24a-25a).

ARGUMENT

THE EQUAL PROTECTION CLAIM RAISED BY APPELLANTS DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

In seeking to have this Court accept jurisdiction of their appeal, appellants have distorted the nature of their challenge. They have presented themselves as a small group of prior New York City-paid Supreme Court law clerks who allegedly were treated dissimilarly for salary purposes from another small group of prior state-paid Supreme Court law clerks when law clerks became state employees. They argue that it was irrational to do so because the state actually "could have saved more money" (Jurisdictional Statement, p. 7) "by paying everyone the same salary as the appellants." (*Id.*, p. 10). This presentation falsely implies that the issue in this constitutional challenge is only the Legislature's treatment of two small groups of law clerks.

The issue on this appeal, indeed the only basis for this Court's jurisdiction under 28 U.S.C. §1257(2), is the constitutionality of the salary allocation provisions of Section 39(8)(b) of the New York Judiciary Law, a statute that appellants assiduously avoid mentioning in their argument. This salary provision did not apply only to the small group of appellants; it applied to all 8,500 court employees transferred to the state payroll. In short, the real equal protection issue in this appeal is whether the state could reasonably assimilate a massive number of locally-paid court employees into its payroll by preserving their current salaries, if above a statutory minimum, without making every employee's salary exactly equal. This claim is plainly insubstantial, as the Constitution does not require such equality in the circumstances of this case.

A. Appellants have not received unequal treatment when compared to prior state-paid law clerks, because there are no material disparities in total compensation between appellants and prior state-paid law clerks.

To begin with, even if this Court accepts appellants' improper focus on the two small groups of law clerks, there would be no equal protection violation, because there is no unequal treatment between these two groups. A statutory classification violates the equal protection guarantee only "when it treats persons similarly situated differently under the law." *Tigner v. State of Texas,* 310 U.S. 141, 147 (1940).

Appellants' entire equal protection claim is based upon purported differences in salary only. They ignore the fact that salary is but one component of the total compensation package available to court employees, and that court employees receive substantial fringe benefits, including different types of insurance coverage, which have a significant monetary value. No equal protection claim based upon differences in salary can be considered without also considering the various fringe benefits that substitute for salary in a compensation package. *See Confederation of Police v. City of Chicago,* 481 F. Supp. 566, 568 (N.D. Ill. 1980) ("total compensation" considered in analyzing an equal protection claim based upon an alleged disparity in one component of compensation).

When appellants were transferred to the state payroll in 1977, they continued to receive their New York City fringe benefits, which included health insurance benefits far over and above that received by prior state-paid employees. (*See supra,* p. 7.) Based on these benefits, the trial court made a specific finding that "*there are no material disparities in total compensation* between [appellants] and prior State-paid law secretaries" (emphasis supplied) (Jurisdictional Statement, p. 4a). The Court of Appeals

did not disturb this finding; indeed, it noted that the fringe benefits received by appellants "are superior to ones enjoyed by prior State-paid employees." (*Id.*, p. 25a). This equivalence in *total compensation* precludes any equal protection claim based upon an alleged disparity of but one component of total compensation — salary.[6]

B. Appellants have not received unequal treatment by the implementation of Section 39(8), because the identity of salary grades for the same court title mandated by that section provides equality of salary treatment.

In undertaking the massive transfer of court employees onto the state payroll, the Legislature was well aware that it would be virtually impossible to make salaries completely equal, since the salaries and benefits of the 8,500 nonjudicial employees transferred to the state payroll had been determined, and continue to be determined after the transfer, by scores of different collective bargaining agreements. The Legislature thus achieved the broad salary equality it set out to achieve by requiring identity of salary *grades* — not of salary. It required that court employees be classified to new titles pursuant to defined legislative criteria [Judiciary Law, §39(8)(a)], and receive at least the minimum salary of the salary grade of a legislatively-established salary schedule. Judiciary Law, §39(8)(b). Employees earning more than the minimum salary were allocated to a salary grade at their then-current salaries. This achieved a broad equalization of salaries by establishing fixed minimum salaries, while at the same time

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6. Appellants' isolating of individual components of compensation as being required to be equal, if taken to its logical conclusion, would create an equal protection principle that mandates that all fringe benefits, as well, be provided at the highest level received by any similar group of employees. Under this logic, the prior state-paid law clerks now would be entitled to bring an action asserting a constitutional right to the additional health insurance benefits received by appellants.

permitting court employees to retain without diminution whatever salaries and benefits they had been receiving from the localities.

The essence of a salary grade schedule with salary ranges is that it fixes limits. The judicial salary sche[illegible]s and the salary determination rules contained in other sections of the Judiciary Law (*see* Section 37) combine to place both a minimum and a maximum limitation on the salaries earnable within salary grades. All newly-hired employees in the law clerk titles thus are hired at the same minimum level.[7] As appellants and all other similarly-graded prior locally-paid and prior state-paid law clerks reach the maximum salary limitations of their same grades, class-wide salary disparities become reduced or eliminated. *See* Jurisdictional Statement, p. 9a (". . .on attainment of maximum salaries, the disparity will disappear").

Broad equality of salary based upon identical salary grades in a structured salary schedule is all that is required by the Constitution. The Constitution does not require exact equality in salaries or a "perfect pay system." *McCorkel v. United States,* 559 F. 2d 1258 (4th Cir. 1977), *cert. denied,* 434 U.S. 873 (1978); *see also, Bruce v. Scearce,* 390 F. Supp. 297 (E.D. Missouri 1975), *aff'd,* 521 F. 2d 796 (1976) (salary cap on some employees earning above $25,000 does not offend equal protection even though no restrictions on employees in other agencies); *cf., Ross v. Moffit,* 417 U.S. 600, 612 (1974). The courts consistently have rejected the assumption that legislative classifications must be made with "mathematical nicety." *Mathews v. DeCastro,* 429 U.S. 181, 185 (1976); *City of New Orleans v. Dukes,* 427 U.S. 297, 303 (1976).

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7. Employees who are promoted within title series receive salaries pursuant to the complex salary determination requirements of Section 37(5) of the Judiciary Law, which in many instances allocates employees to their new titles based upon their current salaries without regard for years of service. Thus, there frequently is not exact equality of salary within salary grades even among employees with the same years of service.

As long as appellants have the same salary grades in the same salary schedules as their prior state-paid counterparts, as they have, they are not receiving any unequal salary treatment. *Cf., Phelps v. Board of Education,* 300 U.S. 319 (1937) (upholding unequal salary treatment of public employees in different salary groupings).

C. Appellants are not similarly situated to other groups of court employees, including prior state-paid law clerks.

The equal protection guarantee applies only to differences in treatment among those who are "similarly situated." *Cohen v. Hurley,* 366 U.S. 117 (1961). "The Constitution does not require things which are different in fact . . . to be treated in law as though they were the same." *Tigner v. State of Texas, supra,* 310 U.S. at 147. Appellants simply are not "similarly situated" to any other group of court employees for purposes of salary "equality", because all are subject to different means of salary determination.

The law that transferred court employees to the state payroll not only preserved all of the then-existing different terms and conditions of employment for each group of employees, Judiciary Law, §39(6), but also preserved all of the existing negotiating units for purposes of collective bargaining. Judiciary Law, §39(7). As a result, many employees in the same titles are represented by different unions who negotiate different collective bargaining agreements with the state. Other employees in these same titles in other geographical areas are not represented by any union and have their terms and conditions of employment fixed administratively by management. Mere identity of title is virtually meaningless for an equal protection analysis of salaries when the terms and conditions of employment of incumbents in the same titles are determined variously through different negotiated contracts with different unions, or unilaterally by management. *See Wisconsin National Organization of Women v. State of Wisconsin,* 417 F. Supp. 978, 986 (W.D. Wisconsin 1976)

(upholding differences in salary treatment based, in part, upon differences in the method of salary determination for represented and unrepresented employees).

Appellants now have their own terms and conditions of employment fixed unilaterally by management. The prior state-paid law clerks, to whom appellants wish to have exact salary equality (as opposed to exact equality to total compensation; *see supra*, pp. 10-11), collectively negotiate their terms and conditions of employment as part of one negotiating unit. There are other groups of law clerks throughout the state, allocated to the same titles and same salary grades as appellants, who are members of even other negotiating units and, as such, collectively negotiate for salary increases within the salary grade structure.[8] As a result, the salaries and fringe benefits of all groups of law clerks throughout the state are different. Since the salaries of law clerks throughout the state are determined by different methods, law clerks are not "similarly situated" for purposes of an equal protection analysis. Appellants certainly cannot pick and choose the group of similarly-graded law clerks with whom they wish to have salary parity.

The Constitution cannot possibly require salary parity among different groups represented by different unions in a collective bargaining context. The terms of all collective bargaining agreements reflect a give-and-take of salary and benefits, including hours of work, vacation, sick leave, health insurance, tuition reimbursement and scores of other items that are subject to collective negotiation. Salary is but one part of this bargain.

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8. Appellants' suggestion that the Legislature could have saved more money by paying all law clerks the same salary as appellants (Jurisdictional Statement, pp. 7, 10) makes no sense. The Legislature could not reduce the salaries of those law clerks earning more than appellants, as those salaries are granted pursuant to collective bargaining agreements that, by constitutional mandate, could not be impaired by the Legislature. *See* U.S. Constitution, Article I, §10.

Indeed, the very salary component of which appellants demand parity — salary increments — are themselves, by law, subject to collective negotiation. McKinney's Session Laws of New York, L. 1972, c. 283, §62. Any constitutional requirement that groups of employees within and without different negotiating units must receive the same terms and conditions of employment, including salary, would cast grave doubt on the viability of the entire collective negotiation process.

D. The legislative classification mandated by Section 39(8)(b) of the Judiciary Law is rationally related to the achievement of valid governmental objectives.

In reviewing equal protection challenges to statutory classifications affecting economic issues, the courts long have recognized that the Legislature has "broad" discretion in enacting such classifications. *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). A legislative classification will not be disturbed if "any state of facts reasonably may be conceived to justify it." *McGowan v. Maryland*, 366 U.S. 420, 426 (1961).

Even assuming that appellants have been treated unequally, which they have not, and even assuming that appellants are similarly-situated to prior state-paid law clerks, which they are not, appellants still have not presented a substantial equal protection question, because the difference in classification between appellants and prior state-paid law clerks is rationally related to the achievement of valid governmental objectives — the assumption of responsibility for local court costs and the establishment of a unified court budget for the Unified Court System. *See* McKinney's New York Sessions Laws, L. 1976, c. 966, §1. The Legislature's allocation of appellants and the 8,500 other transferred employees to state salary grades based upon their then-current salaries was not only rationally related to the achievement of these twin objectives, but, given the state's limited

fiscal resources and the diverse salaries and benefits of these employees, it was the only viable method of achieving these objectives.

1. The limited funds available to implement the state's assumption of local court costs and the establishment of a unified court budget provides a rational basis for the transfer of court employees to the state payroll at their then-current salaries without additional salary increases based upon years of service.

Section 39 of the Judiciary Law was enacted to enable the state to assume responsibility for local court costs and to create a unified court budget funded by the state so that monies and manpower could be allocated when and as needed, unimpeded by artificial local boundaries and the varying fiscal capabilities of the localities. L. 1976, c. 966, §1. Reaching these objectives, however, was an enormous fiscal undertaking by the state. Allocation of former locally-paid court employees, including appellants, to state salary grades on the basis of prior years of local service would have increased these costs astronomically. By enacting Section 39(8)(b), requiring allocation to salary grade on the basis of current salaries or the minimum of the grade, the Legislature determined that it could not afford to expend the tens of millions of dollars required to equalize everybody's salary by allocating the titles of 8,500 employees to salary grades on the basis of prior years of local service. Without this component of the comprehensive fiscal package, there would not have been any state assumption of court costs.

State fiscal constraints uniformly have been recognized as a rational justification for dispensing scarce resources in a manner that may have an unequal impact on individuals affected by a legislative classification. In *Dandridge v. Williams*, 397 U.S. 471 (1970), this Court upheld Maryland's placing of a fixed ceiling on the amount of money that could be granted to a welfare family,

regardless of how many children were in the family. The Court reasoned (397 U.S. at 479):

> Given Maryland's finite resources, its choice is either to support some families adequately and other less adequately, or not to give sufficient support to any family.

The Court concluded that a state may sustain "as many families as it can." 397 U.S. at 480. As Chief Justice Warren stated in *McDonald v. Board of Education*, 394 U.S. 802, 809 (1969);

> [A] legislature need not run the risk of losing an entire remedial scheme simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked.

In sum, faced with the pressing need to centralize court expenses into one budget, but also faced with the enormous fiscal impact of that undertaking, the Legislature chose to maintain the current salaries of the locally-paid employees and mandate equality of salary grades, rather than exact equality of salaries, for the transferred employees. *See supra*, pp. 17-20. This preserved existing salaries for the transferred employees, while giving many of them substantial increases where their salaries were raised to the minimum of their new salary grades. Under these circumstances, there is no constitutional right as demanded by appellants to exact equality of salaries calculated to mathematical precision. *See City of New Orleans v. Dukes, supra*, 427 U.S. at 303.

The merging of vast administrative and fiscal systems always requires some compromise. Because of their legislative reality, no court ever has compelled exact equalization of salaries in system-wide transfers of court employees from the localities of

the state. *See Walsh v. Commonwealth of Massachusetts*, 618 F.2d 156 (1st Cir. 1980) (upholding Massachusetts' transfer of local court employees to the state payroll without equalizing salaries); *Employees' Retirement System v. Oden*, 369 So. 2d 4 (Ala. 1979) (upholding Alabama's transfer of local court employees to the state payroll without equalizing retirement contributions); *cf. Eielson v. Parker*, 427 A.2d 814, 822 (Conn. 1980) (upholding Connecticut's court merger without equalizing judges' salaries). As the Court of Appeals here concluded:

> . . . [T]he disparity in wages created by Judiciary Law sections 37 and 39 have a rational basis in the Legislature's concern for an orderly and speedy transition to a State-wide unified court system which was created, at least in part, to alleviate the financial burden imposed by requiring fiscally strained cities and counties to fund the court system. In assuring this additional financial responsibility for local court costs, it was reasonable for the Legislature to attempt to control the cost for the unified court system and make allocations in the unified court budget in a fairly impartial and expedient manner during this transitional period.

Jurisdictional Statement, p. 26a.

2. The diversity of benefits forming a part of total compensation that could not be equalized provided an additional rational basis for allocation based upon current salaries.

Even aside from fiscal constraints, the Legislature reasonably chose in Section 39(8)(b) to allocate titles to salary grades based upon current salaries. Prior to the Unified Court Budget Act, locally-paid court employees had their salaries and benefits

determined by varying collective bargaining agreements, local ordinances or local administrative orders. *See* Judiciary Law, §39(6)(a). There was no consistency in the terms of these various contracts, laws and orders; nor was there any uniformity of method for establishing compensation for these employees.

Because of the wide diversity of salaries and benefits set forth in scores of different collective bargaining agreements and local ordinances and orders, it was virtually impossible to "equalize" the compensation of the former locally-paid employees pursuant to an artificial criterion of years of prior service. The fringe benefits received by the formerly locally-paid employees — health insurance, annual leave, etc. — forming a substantial part of their compensation, were required, by law, to be continued. Judiciary Law §39(6)(a). In recognition of this wide diversity of fringe benefits that could not possibly be equalized in a system that also mandated the retention of existing collective bargaining units [Judiciary Law §39(7)], the Legislature chose to "equalize" salaries only to the extent of mandating equal *starting* salaries for each court title. Thus, Section 39(8)(b) required allocation to salary grades at the higher of either the minimum of the grade or the employee's current salary. This achieved the legitimate objective of eliminating significant salary disparities through the classification process, while at the same time recognizing that the classification process could not accurately account for all of the other forms of compensation that may have substituted for salary in the determination of terms and conditions of employment with the individual localities. Given the wide diversity in total compensation among the transferred employees, this approach was entirely reasonable.

CONCLUSION

The equal protection claim raised by appellants is too insubstantial for this Court to accept jurisdiction of their appeal. Appellees' motion to dismiss or affirm should be granted.

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Respectfully submitted,

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